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Malvern U. Griffin III
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta GA 30309-3996

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OFFICE OF PETITIONS

In re Application	:	
Wheeler et al.	:	
Application No. 10/711,149	:	LETTER REGARDING
Filed: 08/27/2004	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 34250-016	:	

This letter is in response to the "REQUEST FOR PATENT TERM ADJUSTMENT RECONSIDERATION" filed October 31, 2008. Applicants requests that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment (PTA) is dismissed.

On September 2, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 833 days. On October 31, 2008, applicants submitted the instant comment.

Applicants state that they believe that the patent term adjustment should be zero days as the result of filing at least one terminal disclaimer during the prosecution of the above-identified application.

A review of the application history confirms that the patent term adjustment of 833 days (833 days of Office delay - 0 days of applicant delay) is correct.

It is noted that the filing of the terminal disclaimers on May 1, 2008, have no effect on the determination of patent term adjustment set forth on this application. It is true that 35 U.S.C. 154(b)(2)(B) provides that:

No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

Moreover, 37 CFR 1.703(g) provides that:

No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

However, the provisions of U.S.C. 154(b) for adjustment due to examination delay apply to original applications, other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer. Applicants must determine whether the submission of the terminal disclaimer will prevent them from enforcing the days of patent term adjustment awarded.

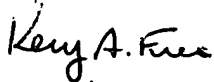
Furthermore, it is noted that the terminal disclaimers were filed together with the reply on May 1, 2008, and thus, there is no applicant delay for the filing of the terminal disclaimers.

In view thereof, the revised Patent Term Adjustment remains 838 days.

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being referred to the Office of Patent Publications for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

A handwritten signature in cursive script that reads "Kery A. Fries".

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration